

1 WILLIAM J. SCHROEDER
2 **KSB LITIGATION, P.S.**
3 510 W. Riverside Ave., Ste. 300
4 Spokane, WA 99201
5 (509) 624-8988
6 william.schroeder@ksblit.legal
7 *Attorneys For Defendant/Counterclaim Plaintiff*

8 JASON ELSTER
9 **ELSTER & MCGRADY, LLC**
10 3847 N. Lincoln Avenue
11 Second Floor
12 Chicago, IL 60613
13 (312) 515-5565
14 jason@elstermcgrady.com
15 *Pro Hac Vice Pending*

12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF WASHINGTON**

14 OLIVET NAZARENE
15 UNIVERSITY,

16 Plaintiff,

17 v.

18
19 UPPER COLUMBIA MISSION
20 SOCIETY, UPPER COLUMBIA
21 CORPORATION OF SEVENTH
22 DAY ADVENTISTS d/b/a UPPER
23 COLUMBIA CONFERENCE OF
SEVENTH-DAY ADVENTISTS,
and ARTHUR LENZ,

24 Defendants.

**OLIVET NAZARENE
UNIVERSITY'S COMPLAINT**

1 Plaintiff Olivet Nazarene University (“ONU” or “Plaintiff”), by and through
2 its undersigned counsel, hereby makes the following statements, allegations, and
3 claims against Defendants Upper Columbia Corporation of Seventh-day
4 Adventists d/b/a Upper Columbia Conference of Seventh-day Adventists
5 (“UCC”), Upper Columbia Mission Society (“UCMS”), and Arthur Lenz (“Lenz,”
6 and together with UCC, and UCMS, “Defendants”):
7

8
9 **PRELIMINARY STATEMENT**

10 This is an action for infringement and cybersquatting involving ONU’s
11 incontestable federally registered trademark for SHINE (Reg. No. 4,113,384) and
12 common law rights associated with the SHINE and SHINE.FM trademarks
13 (collectively, the “SHINE Marks”) under Section 32(1) of the Lanham Act, 15
14 U.S.C. § 1114; unfair competition and false designation of origin under Section
15 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); and cybersquatting under 15 U.S.C. §
16 1125(d), all arising from the infringing use of SHINE 104.9 and SHINE FEST in
17 distributing, marketing, advertising, and promoting radio stations, and the
18 registration and use of the infringing domain names <shine1049.com>,
19 <shine1049.net>, and <shine1049.org> (the “Infringing Domain Names”).
20 Defendants’ facilitation of and cooperation with Upper Columbia Media
21 Association’s (“UCMA”) use of SHINE to launch a competing and confusingly
22 similar radio station and online content streaming service and to solicit donations,
23
24
25
26
27
28

1 and Defendants' bad faith registration and use of the Infringing Domain Names
2 containing ONU's SHINE mark, each are likely to cause consumer confusion.
3 Furthermore, UCC and UCMS knowingly contributed to UCMA's infringement
4 of ONU's SHINE and SHINE.FM trademarks and received the benefit of
5 donations arising from UCMA's use of ONU's SHINE and SHINE.FM
6 trademarks. ONU seeks permanent injunctive relief; an award of profits, and
7 actual damages; and an award of statutory damages in the amount of \$600,000,
8 among other remedies, for the Defendants' willful and unlawful conduct.
9
10
11

12 PARTIES

13 1. Plaintiff ONU is an Illinois not-for-profit corporation with a business
14 address at 1 University Ave, Bourbonnais, Illinois 60914.
15

16 2. Defendant UCC is a Washington not-for-profit corporation with a
17 business address at 3715 South Grove Rd., Spokane, Washington 99224. On
18 information and belief, Upper Columbia Corporation of Seventh Day Adventists
19 operates under the fictitious business names, Upper Columbia Conference of
20 Seventh Day Adventists and Upper Columbia Conference.
21
22

23 3. Defendant UCMS is a Washington not-for-profit corporation with a
24 business address at 3715 South Grove Rd., Spokane, Washington 99224.
25

26 4. Defendant Arthur Lenz is an individual residing at 53 Stutler Rd,
27 Spokane, WA 99224.
28

1 5. Non-party UCMA is a Washington not-for-profit corporation with a
2 business address at 3715 South Grove Rd., Spokane, Washington 99224. ONU
3
4 filed counterclaims against UCMA arising from UCMA's use of SHINE in related
5 Case No. 2:23-cv-00276-SAB pending before this Court and intends to seek
6 consolidation of the present lawsuit with Case No. 2:23-cv-00276-SAB.
7

8 **JURISDICTION AND VENUE**

9 6. This action arises and is brought under the Trademark Act of 1946,
10 commonly known as the Lanham Act, 15 U.S.C. § 1051, *et seq.* and the
11 Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d).
12

13 7. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331,
14 1338, 1367, and 15 U.S.C. § 1121.
15

16 8. This Court has personal jurisdiction over Defendants because they
17 purposefully conduct business in the State of Washington, and within this district,
18 including offering and promoting a radio station and radio content, registering and
19 using domain names that incorporate an infringing trademark, and soliciting
20 donations from Washington consumers.
21

22 9. Venue is proper in this district under 28 U.S.C. § 1391(b)(2), because
23 a substantial part of the events or omissions giving rise to the claim occurred in this
24 district.
25
26
27

1 **FACTUAL ALLEGATIONS AND BACKGROUND**

2 **A. ONU's WONU Radio Station**

3
4 10. WONU is an FM radio station founded, owned, and operated by Olivet
5 Nazarene University. WONU stands for "W Olivet Nazarene University." It first
6 broadcast on the 88.3 frequency in January 1967. Before then, WONU was
7 available only on campus.
8

9 11. In 1986, WONU upgraded the radio station by constructing a 421-foot
10 tower structure on campus and a new transmitter with 35,000 watts (35kw), while
11 moving to the 89.7 frequency.
12

13 12. The building from which WONU broadcasts and produces its radio
14 programming also houses a classroom designed specifically to teach radio
15 broadcasting and programming to emerging Christian college students.
16

17 13. In 2000, WONU began branding itself as SHINE radio. Plaintiff chose
18 the mark SHINE because it was looking for a brand name that was evangelical in
19 nature. Many stations at the time were using "Light," so Plaintiff wanted a brand
20 that communicated the same idea without using an already overused industry term.
21

22 14. Today, ONU is one of the top Christian music networks in the country,
23 broadcasting 24/7 on air and on the Internet. Consumers around the world and in
24 all 50 Unites States may access ONU on its website, <https://www.shine.fm/>.
25

26 15. ONU's mission is to build relationships that influence people for
27 COMPLAINT - 5
28

1 Christ. Its vision is to create personal connections using music and experiences,
2 and its purpose is transformation through collaboration.
3

4 16. Consistent with its mission, vision, and purpose, ONU collaborates
5 with listeners, donors, businesses, ministries, the community, and the Christian
6 music industry to help people transform their lives in a positive way.
7

8 17. ONU solicits donations from residents in each of the 50 United States,
9 including from Washington and Idaho residents.
10

11 **B. ONU's SHINE Marks**

12 18. ONU is the owner of valid and subsisting U.S. Trademark
13 Registration No. 4,113,384, registered on the Principal Register in the United
14 States Patent and Trademark Office, for the mark SHINE, which has become
15 incontestable within the meaning of Section 15 of the Lanham Act, 15 U.S.C. §
16 1065. Attached as **Exhibit A** is a true and correct copy of the registration
17 certificate for ONU's United States Trademark Registration No. 4,113,384, which
18 was issued by the United States Patent and Trademark Office on March 20, 2012,
19 and has a priority date of at least as early as April 16, 2008.
20
21
22

23 19. U.S. Trademark Registration No. 4,113,384 for SHINE covers the
24 following services:

25 Class 41: Education and entertainment services, namely, production
26 and distribution of radio programs for others.
27
28

1 20. ONU has used its SHINE mark in commerce continuously since at
2 least as early as 2000 for the services for which it is registered. Attached hereto as
3 **Exhibit B** are representative samples showing ONU's use of the SHINE mark for
4 the registered services.
5

6 21. ONU expanded its terrestrial reach by acquiring the SHINE 99
7 broadcasting network along with a corresponding trademark application from
8 Kaspar Broadcasting Co., Inc., Serial No. 90767273, covering "Radio
9 broadcasting; Internet radio broadcasting services" along with all of the goodwill
10 and common law rights associated with SHINE 99, which was first used in April
11 1982 and has been used continuously and without interruption through the date of
12 this filing.
13
14
15

16 22. In addition to its trademark registration and application, ONU is the
17 owner of the common law rights of a family of SHINE formative marks through
18 acquisition and its continuous use in interstate commerce with the aforementioned
19 services, including but not limited to, publications, printed materials, podcasts,
20 radio programs, and seminars, concerts, festivals, and similar services related to music
21 and Christian radio programs. ONU has used the SHINE Marks in commerce
22 continuously since at least as early as April 9, 1982, for Christian music and radio
23 program services. Because of its widespread, continuous, and exclusive use of the
24 SHINE Marks to identify its services, ONU owns valid and subsisting federal
25
26
27
28

1 statutory and common law rights in the SHINE Marks.

2 23. ONU's SHINE Marks are distinctive to both the consuming public and
3 ONU's trade.
4

5 24. ONU expended substantial time, money, and resources marketing,
6 advertising, and promoting its services offered under the SHINE Marks. ONU has
7 advertised its services on local, national, and international news outlets. In
8 addition, ONU has advertised and promoted its services offered under the SHINE
9 Marks through websites, social media, mobile apps, podcasting, concerts,
10 billboards, and video, many of which are accessible globally, including in Illinois,
11 Indiana, Michigan, Washington, and Idaho.
12
13

14 25. The SHINE Marks and the services offered under them have also
15 received significant unsolicited coverage in various media, including local
16 newspapers, and television. And within the Christian Music Broadcasting industry,
17 ONU is known for its SHINE Marks.
18
19

20 26. ONU offers its services under the SHINE Marks to all ages and
21 genders seeking music and Christian radio programming.
22

23 27. Because of ONU's considerable research, expenditures, and efforts,
24 the SHINE Marks have come to signify the high quality and value of the services
25 designated by the SHINE Marks, and acquired incalculable distinction, reputation,
26 and goodwill belonging exclusively to ONU. As of June 2023, more than 325,000
27

1 consumers listen to ONU on terrestrial signals, and approximately 855,000
2 consumers listen to ONU through online streaming on a regular basis, including
3 online listeners in Washington and Idaho.
4

5 28. Over the last 10 years, ONU's listenership has grown exponentially
6 with additional FM signals in Northwest and North Central Indiana, including
7 Indianapolis, and Lansing, Michigan; online expansion through new mobile apps;
8 and home listening devices like Amazon Alexa and Google Home, including
9 online listeners residing in Washington and Idaho.
10
11

12 **C. Infringing SHINE 104.9 and SHINE FEST Marks**

13 29. SHINE 104.9 is the broadcast ministry of UCMA. According to
14 multiple streaming websites where UCMA makes its radio station available to the
15 public, including Illinois, Indiana, and Michigan residents, UCMA's mission is to
16 communicate Biblical truths in a culturally relevant manner that lead people to
17 pursue a relationship with Jesus Christ—nearly identical to ONU's mission.
18
19

20 30. UCMA uses the infringing SHINE 104.9 and SHINE FEST marks to
21 identify its Christian music and radio programming services and to promote
22 musical and fundraising events.
23

24 31. ONU recently became aware of UCMA's use of the infringing SHINE
25 104.9 and SHINE FEST marks.
26

27 32. UCMA operates in the same industry as ONU and provides nearly
28 COMPLAINT - 9

1 identical services, including music and Christian radio programming that are
2 similar in nature to ONU's Christian music and radio programming.
3

4 33. UCMA offers its Christian music and radio programming on five
5 terrestrial frequencies in Washington and Idaho: 104.9 FM in Spokane,
6 Washington; 89.7 FM in West Clarkston, Washington; 88.1 FM in Clarkston,
7 Washington; 94.9 FM in Coeur D'Alene, Idaho; and 91.7 FM in Sandpoint, Idaho.
8 On information and belief, UCMA began offering its music and Christian radio
9 programming on those frequencies after ONU obtained registration for its SHINE mark
10 and had begun using SHINE for its radio broadcasts and related services.
11
12

13 34. UCMA broadcasts its radio program on KEEH.
14

15 35. On information and belief, UCMA first began using the infringing
16 SHINE 104.9 mark on March 1, 2016, for the listed services, and it first began
17 using the infringing SHINE FEST mark on June 1, 2017, for the listed services.
18

19 36. On information and belief, the services UCMA provides under the
20 infringing SHINE 104.9 and SHINE FEST marks are music and Christian radio
21 programs that are highly similar to and directly compete with the services offered
22 under ONU's SHINE Marks. Evidence of UCMA's infringing radio programming
23 services bearing the infringing SHINE 104.9 and SHINE FEST marks is hereto
24 attached as **Exhibit C**.
25
26

27 37. UCMA's infringing SHINE 104.9 and SHINE FEST programs are
28

1 very similar to ONU's services provided by ONU under the SHINE Marks, all
2 relating to Christian music and Christian radio programming. For example, ONU's
3 services and UCMA's radio programs and services both cover Christian music and
4 Christian radio programming.
5

6 38. In addition, both ONU and UCMA promote apps available for
7 download in the Apple App Store and the Google Play Marketplace. Evidence of
8 UCMA's app offering is attached hereto as **Exhibit D**.
9

10 39. On information and belief, UCMA broadcasts pre-recorded and live
11 Christian music and Christian radio programming during events marketed under
12 the SHINE FEST mark.
13

14 40. UCMA provides its services under the infringing SHINE 104.9 and
15 SHINE FEST marks through the same channels of trade that ONU offers its
16 services under the SHINE Marks, including online, radio, mobile app, and social
17 media trade channels.
18

19 41. Indeed, UCMA refers to itself as SHINE 104.9 on its live-stream
20 music and Christian radio programming, which is available on the Internet through
21 at least the following live stream websites:
22

- 23
- 24 • <https://shine1049.org/>;
 - 25 • <https://onlineradiobox.com/us/shine1049/>;
 - 26 • <https://www.fmradiofree.com/keeh-shine-1049-fm>;
 - 27

- <https://www.radio.net/s/keeh-shine-1049-fm>; and
- <https://tunein.com/radio/Shine-1049-s32437/>.

42. On information and belief, UCMA provides its services under the infringing SHINE 104.9 and SHINE FEST marks to the same consumers to whom the services are offered under ONU's SHINE Marks.

43. UCMA, UCC, and UCMS each use the infringing SHINE 104.9 and SHINE FEST marks to solicit donations from radio consumers, the same consumers who listen to ONU's radio programming and who are familiar with its SHINE Marks.

44. The infringing SHINE 104.9 and SHINE FEST marks are substantially identical and confusingly similar to ONU's SHINE Marks, as the two are highly similar in sight, sound, and meaning. The SHINE 104.9 mark contains the generic term "104.9," and the SHINE FEST mark contains the generic term "fest."

45. In Registration No. 6045426, UCMA disclaimed the element, "104.9."

46. In Registration No. 6045559, UCMA disclaimed the element "fest."

47. ONU's prior mark SHINE, and UCMA's junior marks that disclaim "104.9" and "fest," respectively, have the same, singular, dominant element, SHINE.

48. In addition to Registration Nos. 6045426 and 6045559, UCMA uses

1 both SHINE 104.9 and SHINE FEST in plan block texts. *See* Screenshots of
2 infringing domain name <shine1049.org>, true and correct copies of which are
3 attached hereto as **Exhibit E**.

4
5 49. Because UCMA's infringing SHINE 104.9 and SHINE FEST marks
6 and ONU's SHINE Marks are used for competing services, the marks are so
7 similar that consumer confusion is likely.
8

9 50. Registration of Registration Nos. 6045426 and 6045559 by the United
10 States Patent and Trademark Office was clear error.
11

12 51. On information and belief, Registration Nos. 6045426 and 6045559
13 were issued in error based in part on UCMA's false representations that it was
14 unaware of any similar or confusingly similar marks when it filed the applications
15 that matured into Registration Nos. 6045426 and 6045559, which were knowingly
16 false statements based on UCMA's actual or constructive knowledge of ONU's
17 preexisting, federally registered SHINE trademark.
18
19

20 52. UCMA, with the help of Defendants, is substantially encroaching on
21 ONU's business as UCMA's radio programs and services provided under the
22 infringing SHINE 104.9 and SHINE FEST marks, which directly compete with
23 ONU's services offered under the SHINE Marks.
24

25 53. Defendants' infringing acts as alleged herein have caused and are
26 likely to cause confusion, mistake, and deception among the relevant consuming
27
28

1 public as to the source of origin of UCMA's radio programs and domain name
2 content and have and are likely to deceive the relevant consuming public into
3 mistakenly believing that UCMA's radio programs and domain names originate
4 from, are associated or affiliated with, or are otherwise authorized by ONU.
5

6 54. In fact, UCMA's use of SHINE 104.9 and SHINE FEST have caused
7 actual confusion. To wit, ONU received donations from radio broadcast listeners
8 who were confused as to the source and origin of UCMA's and ONU's services
9 and believed they were donating to UCMA when in fact they had donated to
10 ONU.¹
11

12
13 55. UCMA was aware of the actual confusion.
14

15 56. On information and belief, Defendants were aware of instances of
16 actual confusion.
17

18 57. Listener confusion is compounded by UCMA offering identical
19 programming as that offered by ONU via its radio network, including the popular
20 Brant Hansen Show,² in an apparent attempt to create as much confusion as
21 possible between itself of and ONU by mimicking ONU's broadcast offering.
22

23 58. UCMA's and Defendants' infringing acts as alleged herein have
24 therefore likely caused and are likely to cause future irreparable harm to the
25

26
27 ¹ All such misdirected donations were reversed.

28 ² ONU was one of the first radio stations to broadcast the Brant Hansen Show.

1 relevant consuming public. Specifically, given the devoted and significant
2 consumer following around ONU's SHINE Marks, consumers of UCMA's
3 infringing services are being misled and deceived into putting trust in infringing
4 services to guide their spiritual transformation through music.
5

6 59. On information and belief, UCMA's and Defendants' use of the
7 infringing SHINE 104.9 and SHINE FEST marks trades off the goodwill
8 accumulated by ONU's SHINE Marks, is causing confusion and deception in the
9 marketplace, and is diverting potential listeners and donors to UCMA and
10 Defendants.
11

12
13 **D. Registration and Use of the Infringing Domain Names**
14

15 60. On or about August 2, 2016, Lenz and UCC registered the
16 <shine1049.org>, <shine1049.com>, and <shine1049.net> domain names. *See*
17 Reverse WhoIs Records for each of the Infringing Domain Names, collectively
18 attached hereto as **Exhibit F**.
19

20 61. On information and belief, Lenz and UCC registered each of the
21 Infringing Domain Names with a bad faith intent to profit from ONU's SHINE
22 Marks.
23

24 62. UCC, UCMA, and Lenz each used each of the Infringing Domain
25 Names in commerce since they were registered in 2016 to infringe ONU's SHINE
26 Marks.
27

1 63. On information and belief, UCC, UCMA, and Lenz intentionally use
2 a privacy proxy service to hide the identity(ies) of the current registrants of the
3 Infringing Domain Names.
4

5 64. On information and belief, UCC, UCMA, and/or Lenz are the current
6 registrants of the Infringing Domain Names.
7

8 65. The Infringing Domain Names incorporate the infringing SHINE
9 104.9 mark and ONU's SHINE mark.
10

11 66. The Infringing Domain Names are identical or confusingly similar to the
12 SHINE Marks, which were distinctive at the time the Infringing Domain Names
13 were registered.
14

15 67. On information and belief, UCC, UCMA, and Lenz were aware of
16 ONU's rights in the SHINE Marks when they selected, registered, and began using
17 the Infringing Domain Names, and UCC and Lenz knowingly and intentionally
18 registered the Infringing Domain Names because of their similarity to the SHINE
19 Marks.
20

21 68. UCC, UCMA and Lenz have no legitimate rights in or to any trademark
22 or name that is similar to the Infringing Domain Names.
23

24 69. Without ONU's authorization and, on information and belief,
25 beginning after ONU acquired protectable exclusive rights in the SHINE Marks,
26 UCMA posted live websites accessible through the Infringing Domain Names (the
27

1 “Infringing Websites”). The Infringing Websites remain active as of the filing.

2 70. The Infringing Websites consist of, among other things, (1) a live-
3 streaming service of UCMA’s music and Christian radio programming available
4 throughout the world and within all 50 United States; (2) information about artists,
5 concerts, the community, and UCMA’s ministry; and (3) a donation page seeking
6 financial support from donors. *See* Exhibit E for true and correct screenshots of
7 the Infringing Websites as of August 14, 2023.
8

9 71. For example, on the “Support” page of the Infringing Websites,
10 consumers can support UCMA through payment by credit or debit card, or by
11 electronic fund transfer.
12

13 72. Importantly, the Support page specifically solicits donations from
14 listeners in every state, including the states where ONU solicits and receives
15 listener donations.
16

17 73. On information and belief, UCMA and Defendants used the Infringing
18 Domain Names, which are confusingly similar to ONU’s SHINE Marks, to divert
19 internet users looking for ONU’s website to the Infringing Websites.
20

21 74. On information and belief, UCMA and Defendants used the Infringing
22 Domain Names with bad faith intent to benefit financially by seeking donations
23 from listeners and donors.
24

25 75. Because the Infringing Domain Names are confusingly similar to the
26

1 SHINE Marks, and the Infringing Websites provide services that are identical and
2 related to ONU's services under the SHINE Marks, consumers are likely to be
3 confused into thinking that ONU authorized, approved, or is affiliated or
4 connected with the Infringing Websites and the services offered on the sites, when
5 that is not the case.
6

7
8 76. UCMA's and Defendants' acts alleged herein trade on the goodwill of
9 ONU's SHINE Marks, cause confusion and deception online and in the
10 marketplace, divert internet users looking for ONU's website or ONU's services
11 under the SHINE Marks to the Infringing Websites, and divert potential donations
12 to UCMA and UCMS.
13

14 **E. ONU's Cease-and-Desist Efforts**
15

16 77. ONU's counsel has tried without success to resolve this matter. On
17 April 11, 2023, ONU's counsel sent a cease-and-desist letter to UCMA's counsel,
18 objecting to the use of the confusingly similar and infringing SHINE 104.9 and
19 SHINE FEST marks and advising that such use was an infringement of ONU's
20 prior rights in the SHINE Marks.
21

22 78. ONU never received a response to its April 11 cease-and-desist letter.
23

24 79. In April 2023, ONU filed a Petition for Cancellation with the
25 Trademark Trial and Appeal Board, seeking cancellation of the SHINE 104.9 and
26 SHINE FEST registrations.
27

1 80. On July 5, 2023, counsel for ONU and counsel for UCMA discussed
2 ONU's pending Petition for Cancellation, and the parties were unable to resolve
3 their dispute. During that conversation, counsel for ONU informed counsel for
4 UCMA that ONU was aware of instances of actual consumer confusion. Also
5 during that conversation, counsel for UCMA informed counsel for ONU that
6 UCMA was operating under the umbrella of UCC and that UCC would support
7 any legal action involving UCMA and the SHINE Marks.
8

9
10 81. On information and belief, UCMA informed UCC and UCMS of
11 ONU's cease and desist demands, as well as the instances of actual confusion
12 conveyed by ONU.
13

14 82. On August 16, 2023, counsel for ONU informed counsel for UCMA
15 that coexistence would not be possible, and that ONU would be happy to work
16 with UCMA on a reasonable schedule to accomplish its rebranding.
17

18 83. UCMA responded to ONU's August 16, 2023, demand that it cease
19 and desist use of its SHINE Marks by filing the present lawsuit.
20

21 84. UCC's, UCMS's, and UCMA's failure to cease use of the SHINE
22 104.9 and SHINE FEST marks demonstrate that their conduct is willful, and that
23 UCMA and Defendants are not willing to cease use of the SHINE 104.9 and
24 SHINE FEST marks, and as such, would continue willfully infringing on ONU's
25 rights.
26

1 85. UCMA's and Defendants' acts are causing, and unless restrained, will
2 continue to cause damage and immediate irreparable harm to ONU and to its
3 valuable reputation and goodwill with the consuming public for which ONU has
4 no adequate remedy at law.
5

6 **CAUSES OF ACTION**
7

8 **FIRST CLAIM FOR RELIEF**
9 **Cybersquatting 15 U.S.C. § 1125(d)**
10 **(Against UCC and Lenz)**

11 86. ONU repeats and realleges the preceding paragraphs as if fully set
12 forth herein.

13 87. ONU owns all rights in and to the SHINE Marks, which are strong and
14 distinctive, and were strong and distinctive as of the date that UCC and Lenz
15 registered the Infringing Domain Names and when UCMA began using the
16 Infringing Domain Names.
17

18 88. UCC and Lenz registered the Infringing Domain Names, which are
19 confusingly similar to ONU's SHINE Marks.
20

21 89. UCMA used the Infringing Domain Names, which are confusingly
22 similar to ONU's SHINE Marks.
23

24 90. UCC, UCMA, and Lenz registered and used the Infringing Domain
25 Names with an intent to profit from their confusing similarity to ONU's SHINE
26 Marks.
27

1 91. Among other things, on information and belief:

- 2 a. UCC and Lenz registered the Infringing Domain Names, despite
- 3 knowing that Defendants had no rights in any name or mark containing
- 4 SHINE and was not known by any name that was referenced or
- 5 reflected in the Infringing Domain Names;
- 6 b. UCC, UCMA, and Lenz made no bona fide, non-infringing,
- 7 commercial use or fair non-commercial use of the Infringing Domain
- 8 Names; and
- 9 c. UCC, UCMA, and Lenz intended to divert consumers and donors
- 10 looking for ONU's services online to the Infringing Websites by
- 11 exploiting the confusing similarity of the Infringing Domain Names
- 12 and the SHINE Marks for their commercial gain.

13 92. UCC's, UCMA's, and Lenz's conduct is directly and proximately

14 causing substantial, immediate, and irreparable harm and injury to ONU, and to

15 its goodwill and reputation, and will continue to damage ONU unless enjoined by

16 this court.

17 93. ONU has no adequate remedy at law.

18 94. ONU is entitled to injunctive relief pursuant to 15 U.S.C. §§ 1116 and

19 1125(d)(1)(C), including, among other injunctive relief, transfer, or cancellation

20 of the registration of the Infringing Domain Names.

1 95. ONU is further entitled to recover its damages and both Defendants' and
2 UCMA's profits, enhanced as the court deems appropriate and equitable, in
3 amounts to be proven at trial, pursuant to 15 U.S.C. § 1117(a). Alternatively, ONU
4 is entitled to maximum statutory damages of \$100,000 for each of the Infringing
5 Domain Names pursuant to 15 U.S.C. § 1117(d). ONU is therefore entitled to
6 statutory damages of \$600,000, as follows: \$300,000 for UCC's registration of
7 each of the three Infringing Domain Names; and \$300,000 for Lenz's registration
8 of each of the three Infringing Domain Names.
9

10
11
12 96. ONU is further entitled to recover its attorneys' fees and costs,
13 together with prejudgment and post-judgment interest.
14

15 **SECOND CLAIM FOR RELIEF**
16 **Contributory Infringement**
17 **(Against UCC and UCMS)**

18 97. ONU repeats and realleges the preceding paragraphs as if fully set
19 forth herein.

20 98. UCMA infringed ONU's SHINE Marks.

21 99. UCC and UCMS intentionally induced UCMA to infringe ONU's
22 SHINE Marks and also intentionally contributed to UCMA's infringement of
23 ONU's SHINE Marks.
24

25 100. At all times relevant, UCC and UCMS knew or had reason to know of
26 ONU's rights in and to the SHINE Marks.
27

1 101. Despite this knowledge, UCC and UCMS directed or otherwise
2 induced UCMA to infringe on ONU's rights to the SHINE Marks by using SHINE
3 104.9, SHINE FEST, and the Infringing Domain Names for the same goods and
4 services as covered by ONU's SHINE Marks.
5

6 102. Alternatively, on information and belief, UCC and UCMS each had
7 the subjective belief that UCMA was infringing ONU's SHINE Marks and each
8 took deliberate actions to avoid learning about the infringement.
9

10 103. UCC and UCMS directly and/or indirectly benefited from UCMA's
11 infringement: on information and belief, UCC and/or UCMS received donations
12 from consumers along with other benefits arising from UCMA's use of the SHINE
13 Marks.
14

15 104. ONU has suffered irreparable harm as a result of UCC's and UCMS's
16 conduct, and ONU has no adequate remedy at law.
17

18 105. As a result of UCC's and UCMS's conduct, ONU has been harmed in
19 an amount to be determined at trial.
20

21 **JURY DEMAND**

22 ONU hereby demands a jury trial on all matters and issues triable by jury.
23

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff Olivet Nazarene University respectfully requests
26 that this Court enter a Judgment and Order in its favor and against Defendants as
27

1 follows:

2 A. That UCC and UCMS induced UCMA to infringe and/or contributed
3 to UCMA's infringement of ONU's SHINE Marks and are liable for contributory
4 infringement of ONU's SHINE Marks.
5

6 B. Granting an injunction permanently enjoining UCC and UCMS, their
7 employees, agents, officers, directors, attorneys, successors, affiliates,
8 subsidiaries, and assigns, and all those in active concert and participation with any
9 of the foregoing persons and entities who receive actual notice of the Court's order
10 by personal service, or otherwise, from:
11

12 a. engaging in any activity that contributes to the infringement of
13 ONU's SHINE Marks; and
14

15 b. aiding, assisting, or abetting any other individual or entity in
16 doing any act prohibited by sub-paragraph (a).
17

18 C. Granting such other and further relief as the Court may deem proper to
19 prevent the public from deriving the false impression that any goods or services
20 manufactured, sold, distributed, licensed, marketed, advertised, promoted, or
21 otherwise offered or circulated by UCMA are in any way approved, endorsed,
22 licensed, sponsored, authorized, or franchised by or associated, affiliated, or
23 otherwise connected with ONU or constitute or are connected with ONU's
24 services.
25

1 D. Directing Defendants to immediately cease all display, distribution,
2 promotion, sale, offer for sale and/or use of any and all materials that feature or
3 bear any designation or mark comprising of or incorporating SHINE or
4 SHINE.FM as branding on the radio or any other mark that is a counterfeit, copy,
5 simulation, confusingly similar variation, or colorable imitation of the SHINE
6 Marks, and to immediately remove them from public access and view.
7

9 E. Awarding ONU an amount up to three times the amount of its actual
10 damages, in accordance with Section 35(a) of the Lanham Act (15 U.S.C. §
11 1117(a)).
12

13 F. Awarding ONU \$600,000 in statutory damages in accordance with
14 Section 43(d) of the Lanham Act (15 U.S.C. § 1117(d)).
15

16 G. Directing that UCC and Lenz transfer to ONU the Infringing Domain
17 Names.
18

19 H. Directing that Defendants account to and pay over to ONU all profits
20 realized by their and UCMA's wrongful acts in accordance with Section 35(a) of
21 the Lanham Act (15 U.S.C. § 1117(a)), enhanced as appropriate to compensate
22 ONU for the damages caused thereby.
23

24 I. Awarding ONU punitive and exemplary damages as the Court finds
25 appropriate to deter any future willful infringement.
26

27 J. Declaring that this is an exceptional case pursuant to Section 35(a) of
28 COMPLAINT - 25

1 the Lanham Act and awarding ONU its costs and reasonable attorney's fees
2 thereunder (15 U.S.C. § 1117(a)).
3

4 K. Awarding ONU interest, including prejudgment and post-judgment
5 interest, on the foregoing sums.
6

7 L. Awarding such other and further relief as the Court deems just and
8 proper.
9

10 Submitted this 28th day of November, 2023,

11 **KSB LITIGATION, P.S.**
12

13 By: s/ William J. Schroeder

14 William J. Schroeder, WSBA #7942
15 510 West Riverside Ave., Ste. 300
16 Spokane, WA 99201
17 william.schroeder@ksblit.legal
18 *Attorneys for Defendant*

19 JASON ELSTER
20 **ELSTER & MCGRADY LLC**
21 Second Floor
22 3847 N. Lincoln Avenue
23 Chicago, IL 60613
24 (312) 515-5565
25 jason@elstermcgrady.com
26 *Pro Hac Vice Pending*
27

CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice. I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

[NONE]

By: s/ William J. Schroeder

William J. Schroeder, WSBA #7942

510 West Riverside Ave., Ste. 300

Spokane, WA 99201

P (509) 624-8988

william.schroeder@ksblit.legal

Attorneys for Defendant

Exhibit A

United States of America
United States Patent and Trademark Office

SHINE

Reg. No. 4,113,384

Registered Mar. 20, 2012

Int. Cl.: 41

SERVICE MARK

PRINCIPAL REGISTER

OLIVET NAZARENE UNIVERSITY (ILLINOIS NON-PROFIT CORPORATION)
1 UNIVERSITY AVE. PO 592
BOURBONNAIS, IL 60140

FOR: EDUCATIONAL AND ENTERTAINMENT SERVICES, NAMELY, PRODUCTION AND
DISTRIBUTION OF RADIO PROGRAMS FOR OTHERS, IN CLASS 41 (U.S. CLS. 100, 101
AND 107)

FIRST USE 3-2-2000, IN COMMERCE 3-2-2000

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-
TICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 77-449,407, FILED 4-16-2008

GENE MACIOL, EXAMINING ATTORNEY

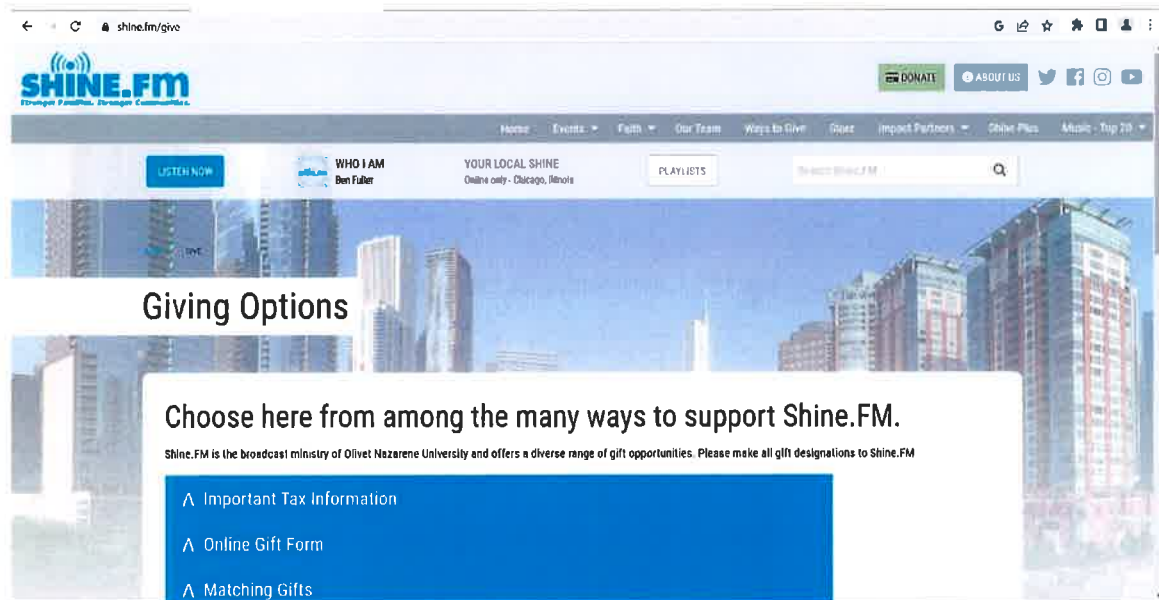
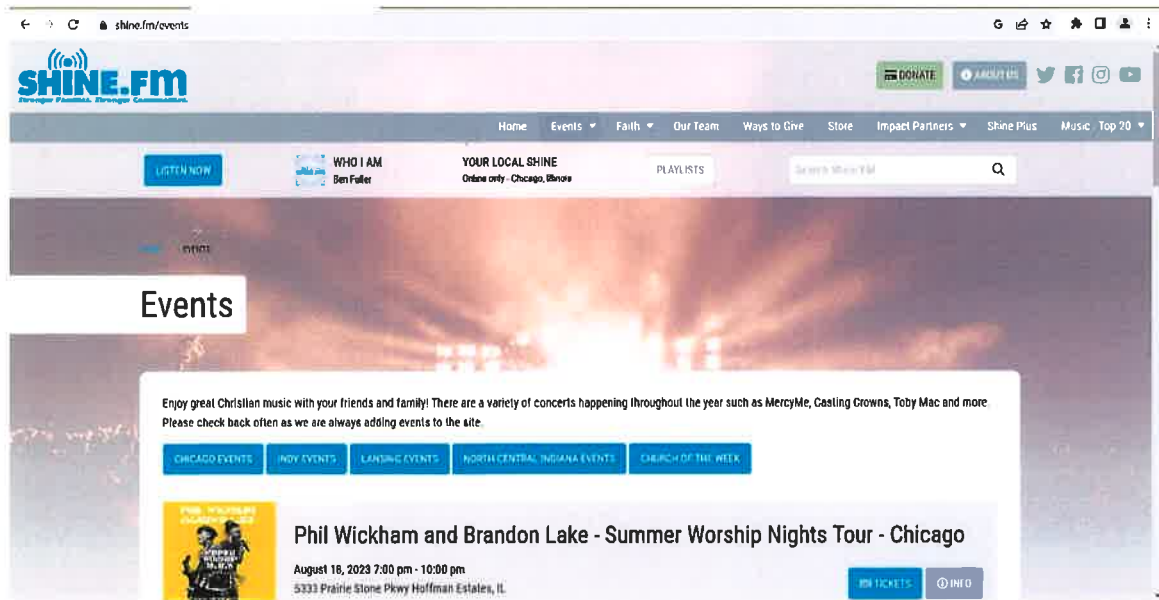


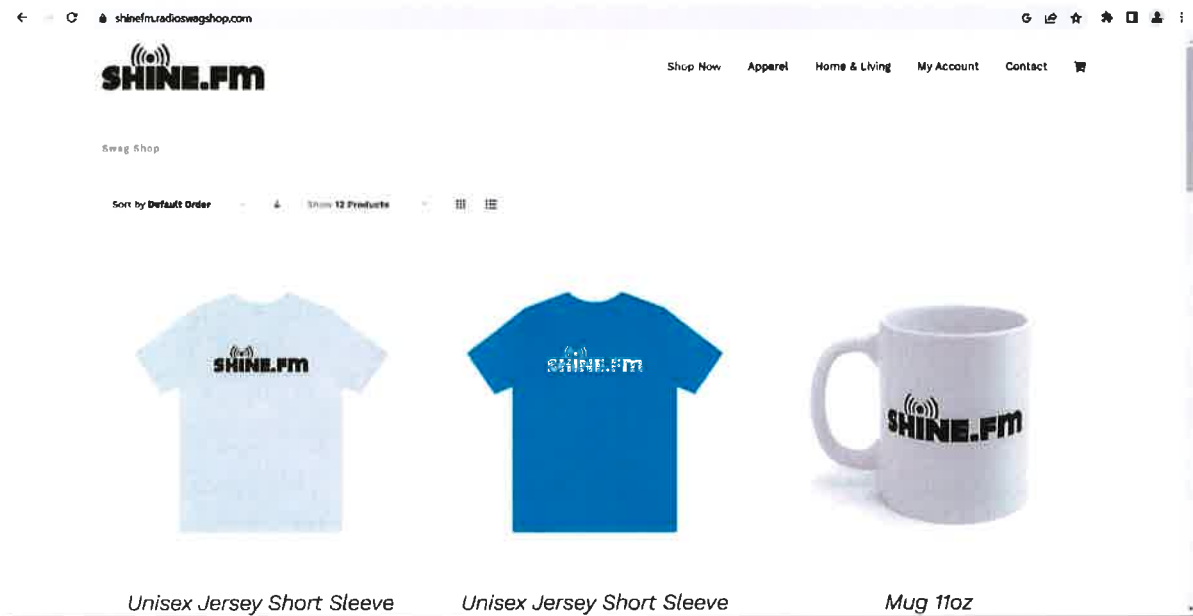
David J. Kyllas

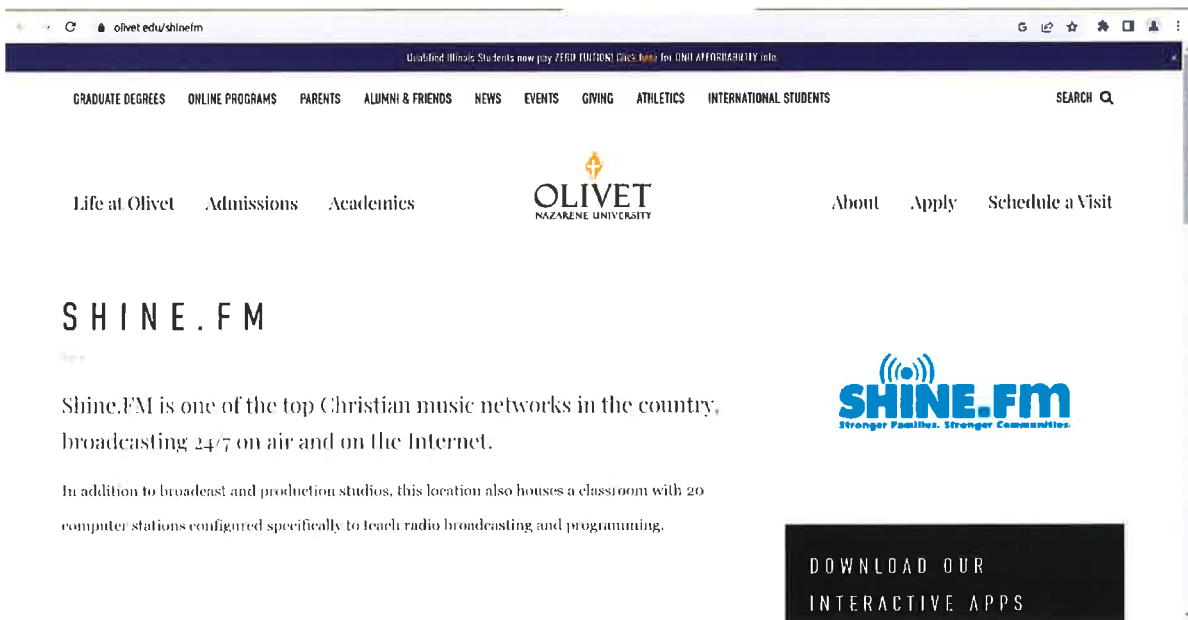
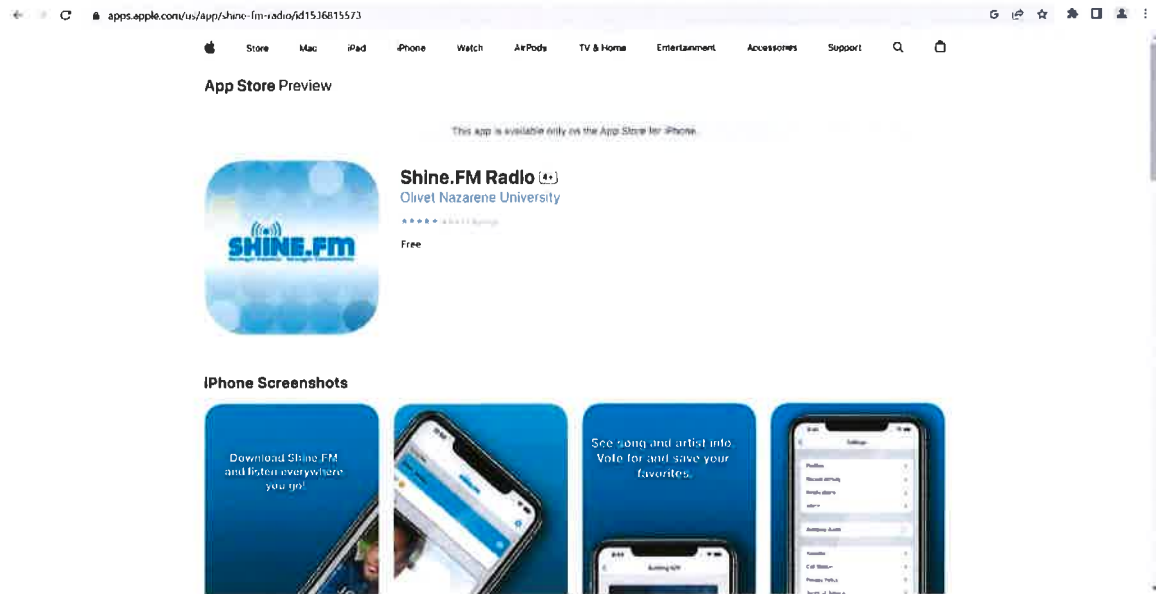
Director of the United States Patent and Trademark Office

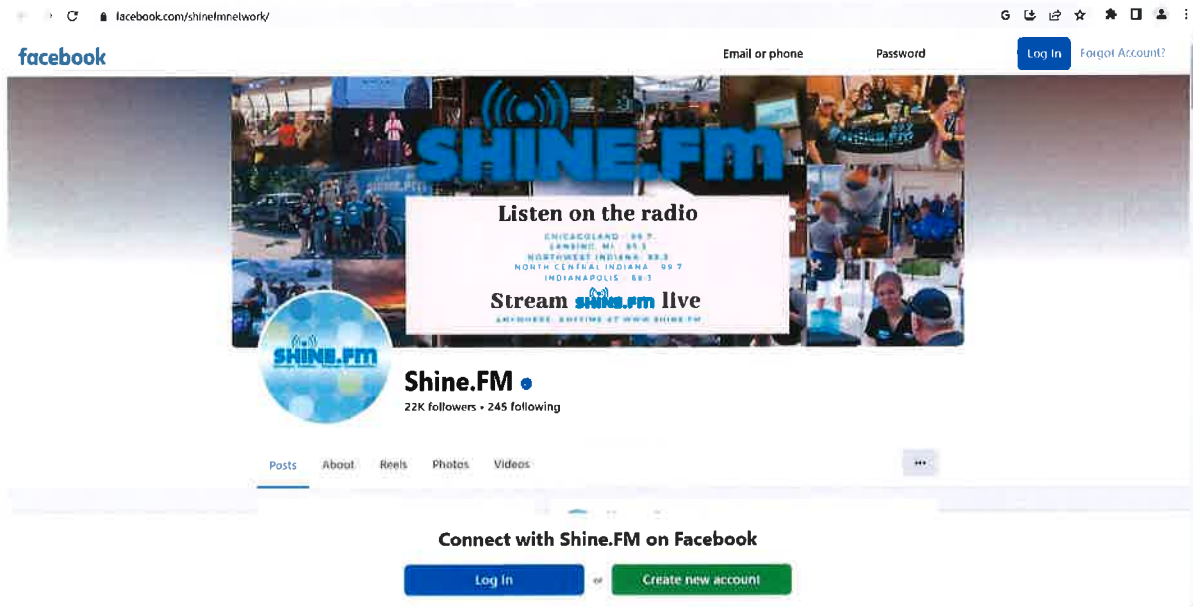
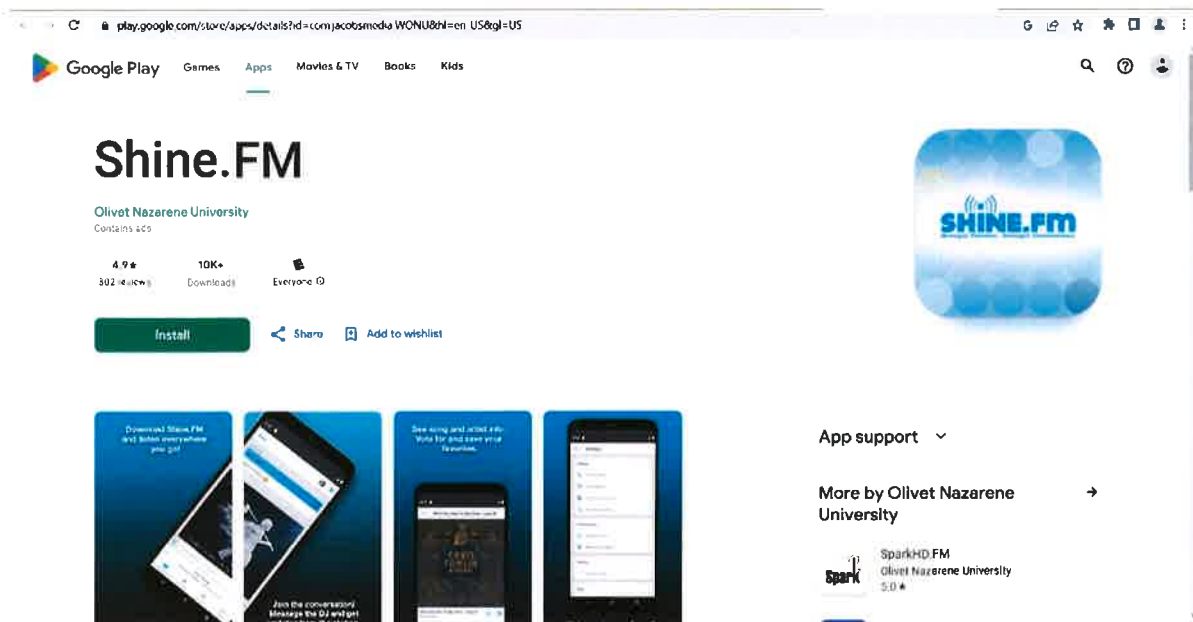
Exhibit B

(Last accessed August 14, 2023))









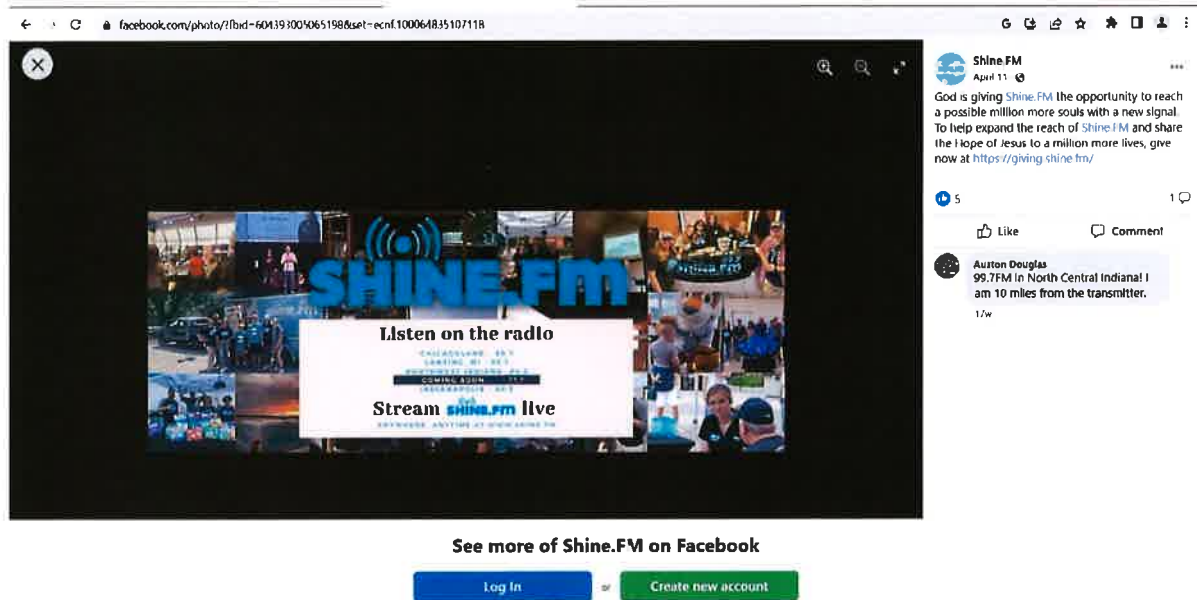


Exhibit C
(Last accessed August 14, 2023)



Exhibit D

(Last accessed August 14, 2023)

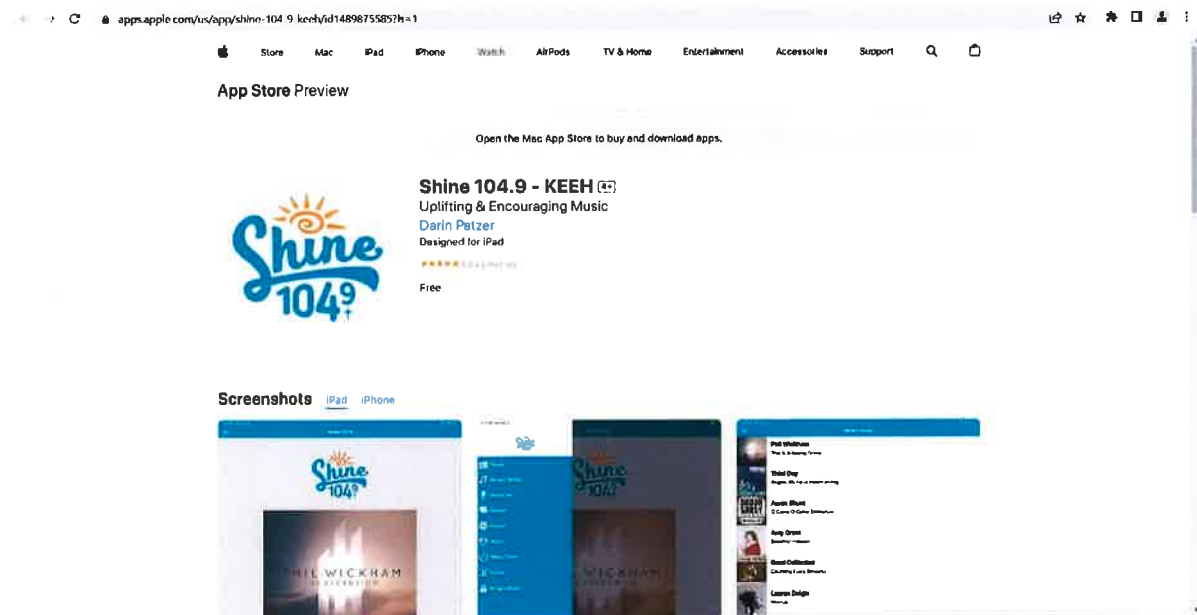
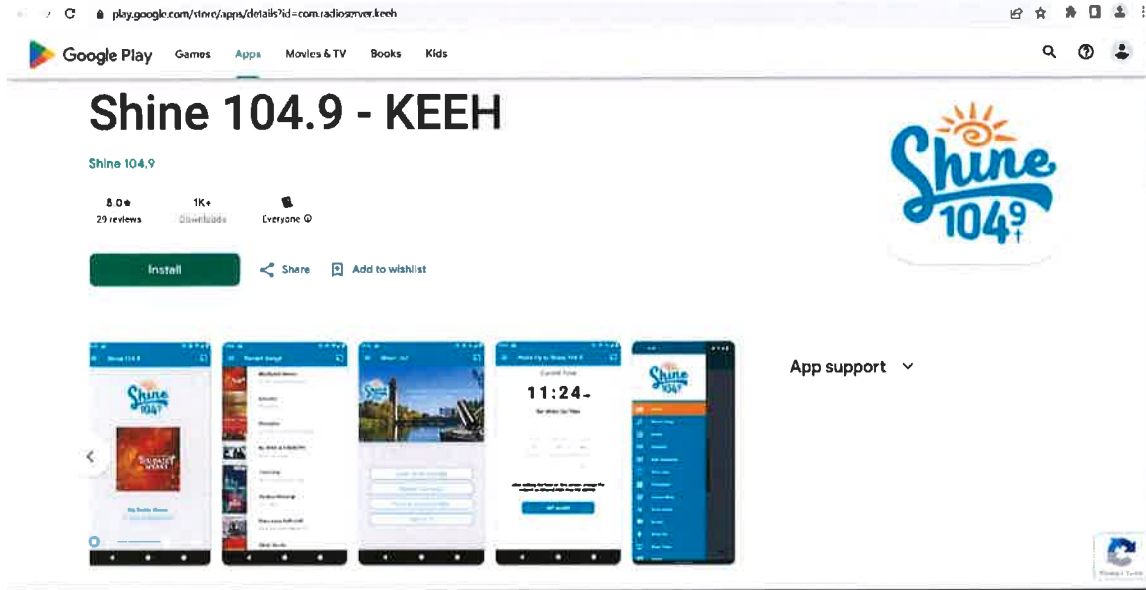
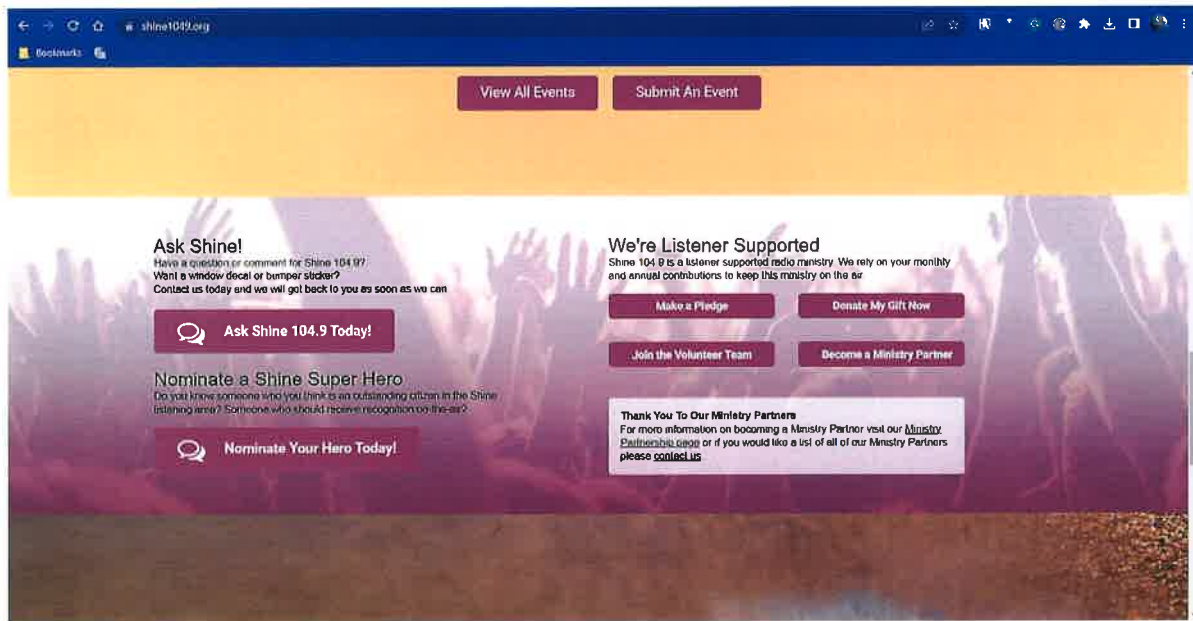


Exhibit E

(Last accessed November 7, 2023)



Be a friend to Shine 104.9!

Make your pledge today by filling out this form. Thanks so much for your support!

Form

Your Gift Amount *

\$0.00

Donation Type *

Monthly

I would like to pay by *

Check

Name *

Email *

Would you like to receive the Shine 104.9 concert/event e-newsletter? *

No

Phone Number *

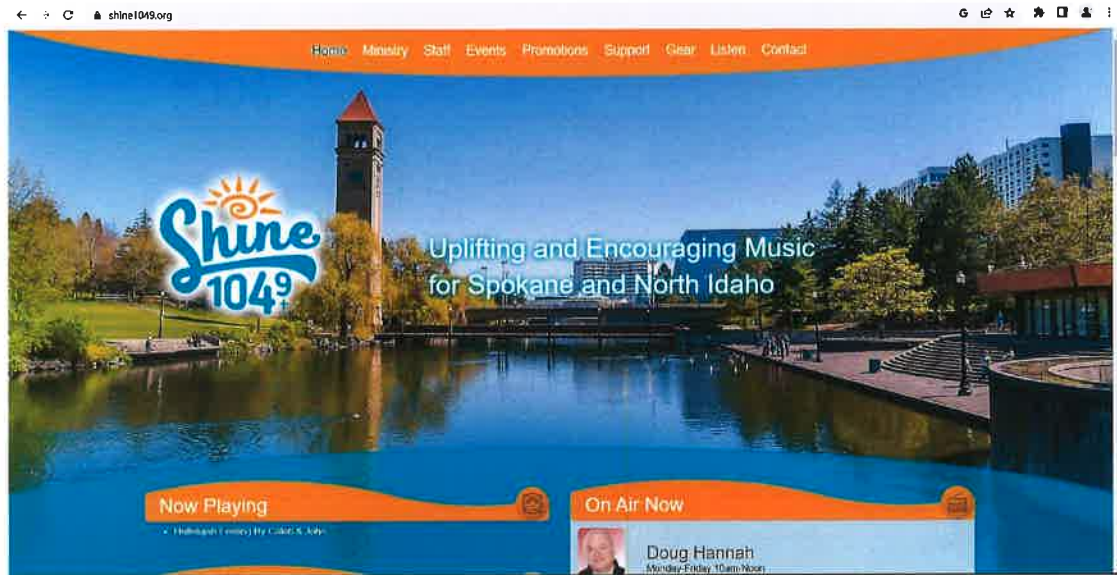
Address *

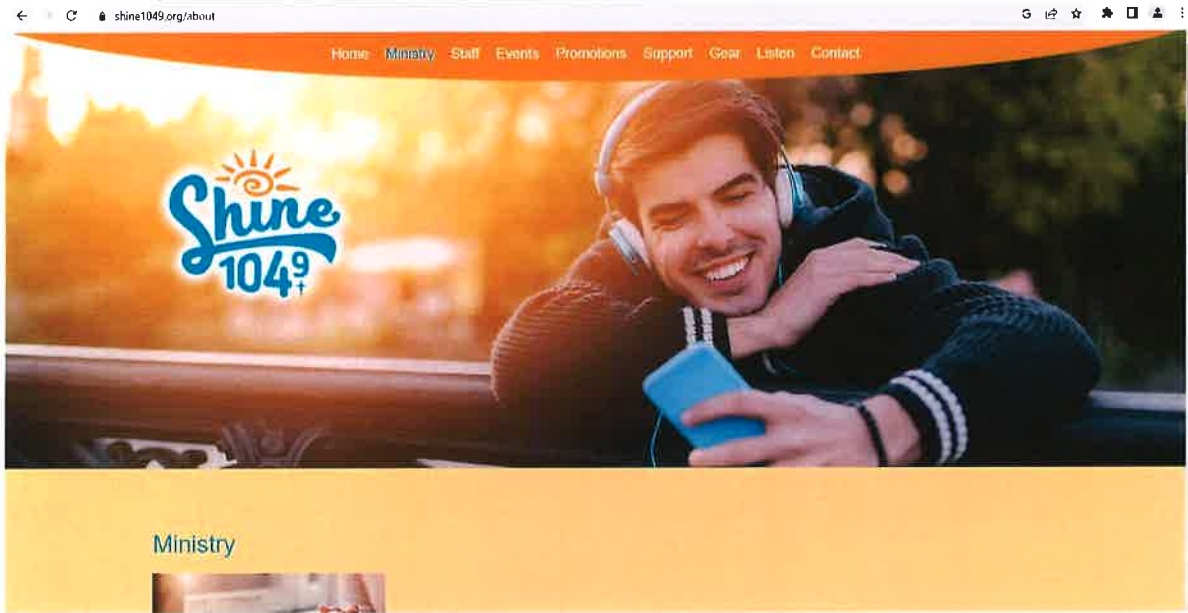
City *

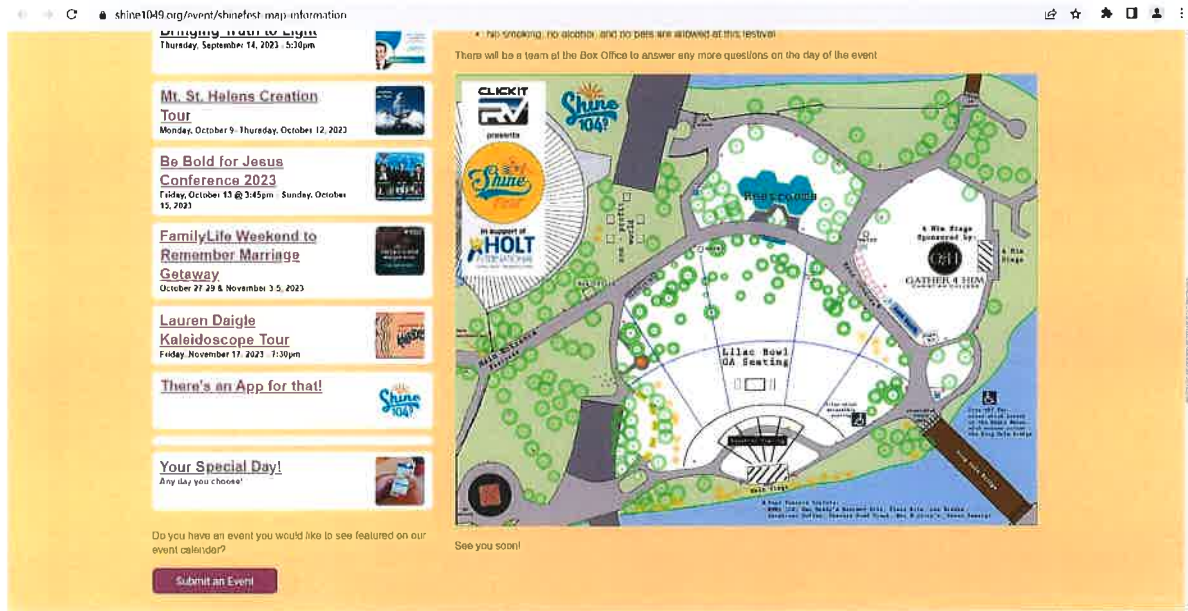
State *

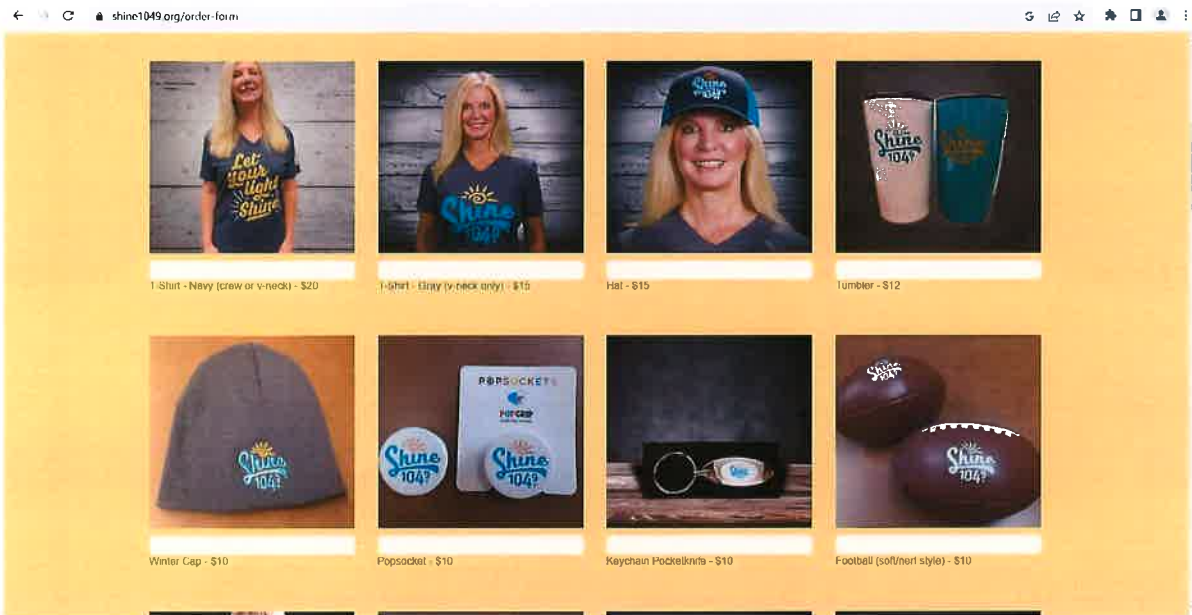
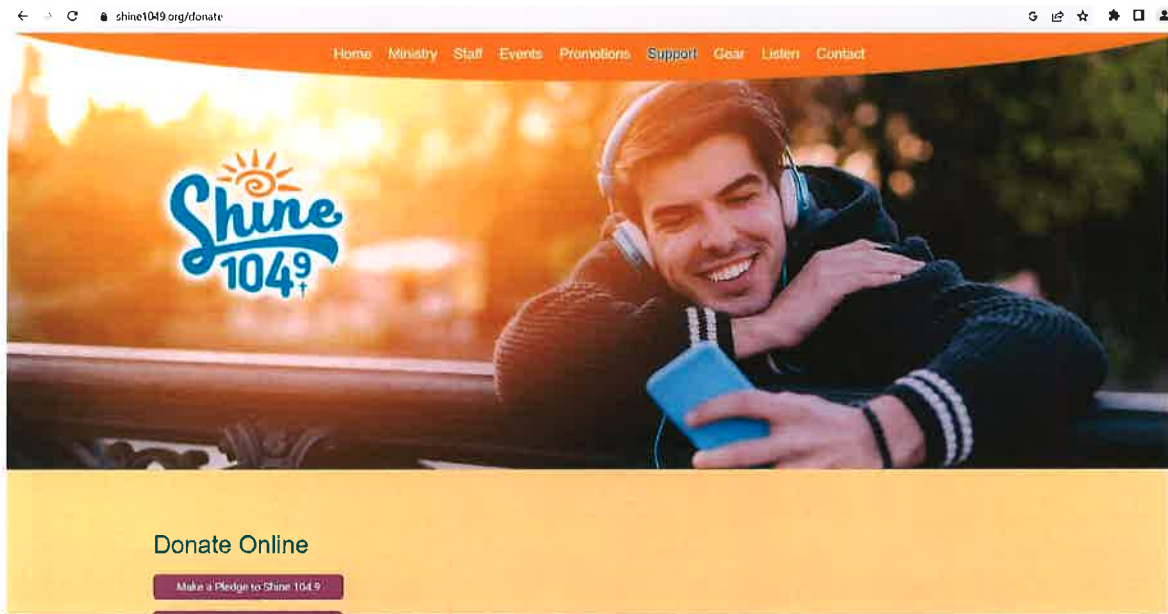
Exhibit E Continued

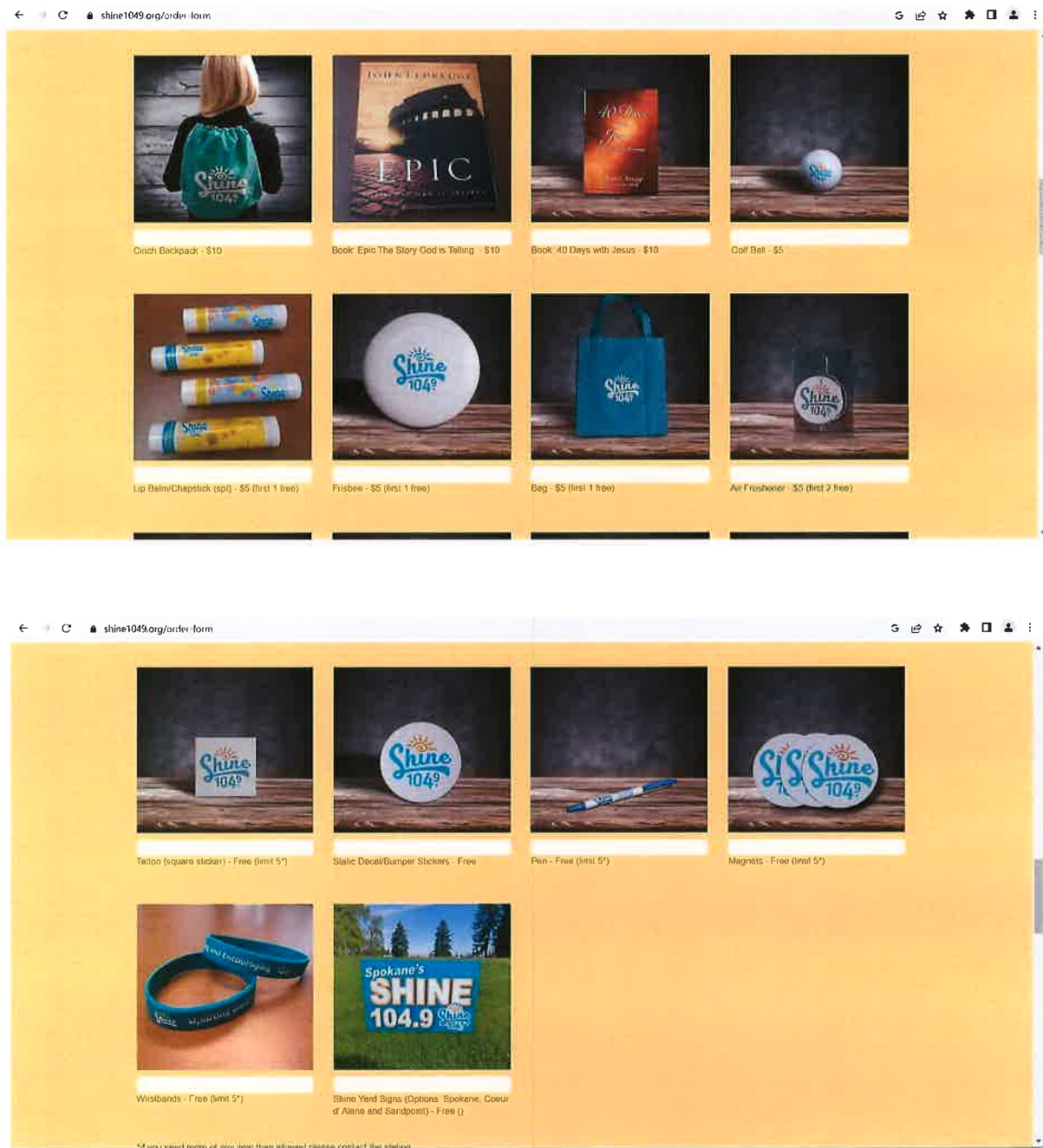
(Last accessed August 14, 2023)











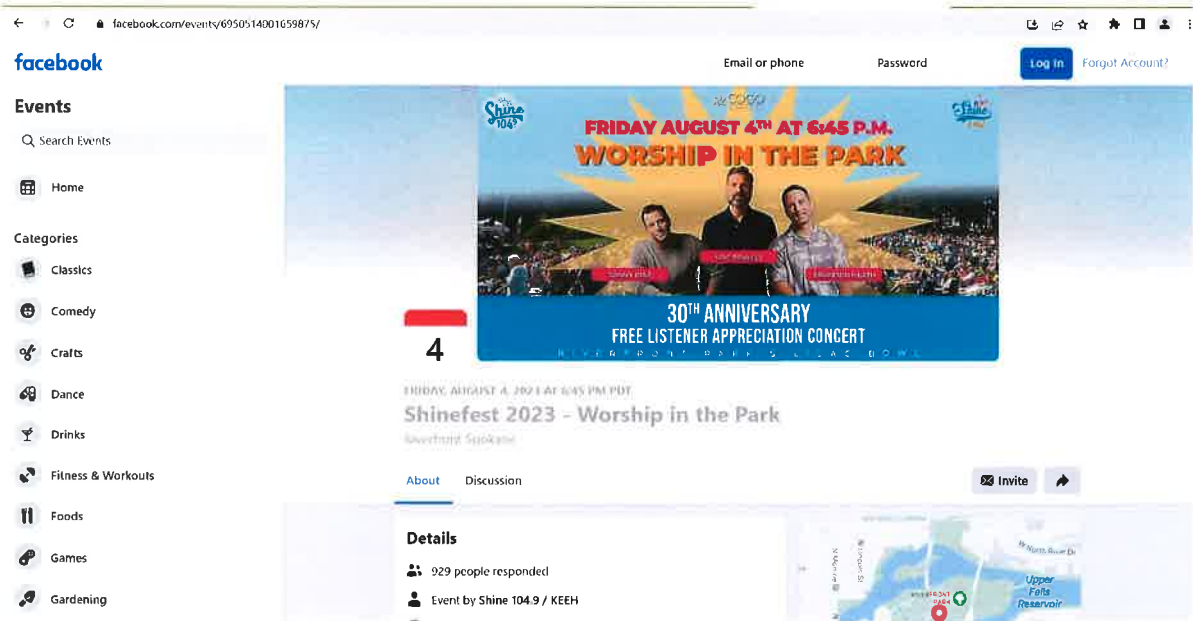
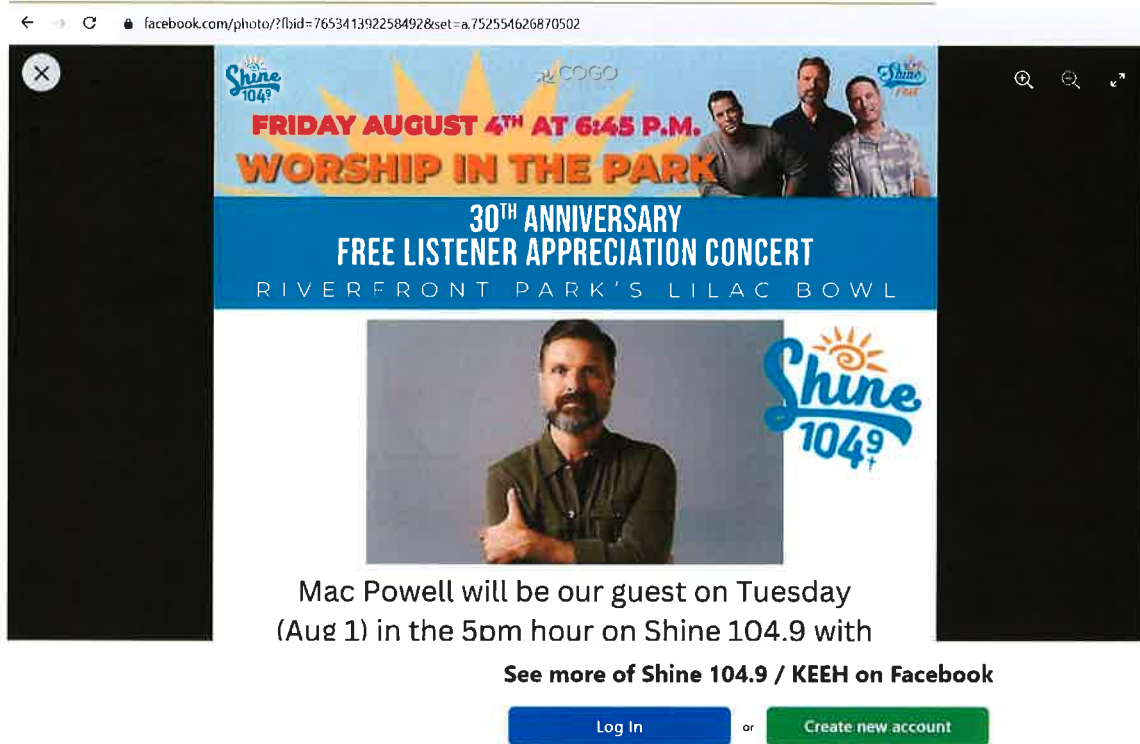


Exhibit F

See attached

WHOIS DATA CENTER

Time Travel Whois Lookup

Domain	Phone	Email	Name	Company	Keyword
--------	-------	-------	------	---------	---------

shine1049.org

Search

'2' Whois Records found for the Domain 'shine1049.org'

[↓](#) Download shine1049.org updated on : 2017-10-05 08:32:32[Formatted](#) [XML](#) [JSON](#) [Plain Text](#)

DOMAIN INFORMATION

Domain Name:

shine1049.org

TLD:

.ORG [?](#)

Domain Registrar Id:

48

Domain Registrar Name:

eNom Inc. [?](#)

Domain Registrar Url:

<http://www.enom.com>

Create Date:

2016-08-02

Updated Date:

2017-03-11

Expiry Date:

2018-08-02

9/28/23, 3:04 PM

shine1049.org Reverse Whois Lookup | WhoisDataCenter.com

Query Time:

2017-10-05 08:32:32

REGISTRANT CONTACT

Name:

ARTHUR LENZ

Company:

UPPER COLUMBIA CONFERENCE

Address:

3715 S. GROVE RD

City:

SPOKANE

State:

WA

Zip Code:

99224-6090

Country:

United States ②

Email:

artl@uccsda.org

Phone:

+1.5098382761

Fax:

+1.5098384882

ADMINISTRATIVE CONTACT

Name:

ARTHUR LENZ

Company:

UPPER COLUMBIA CONFERENCE

Address:

3715 S. GROVE RD

City:

SPOKANE

State:

WA

Zip Code:

99224-6090

Country:

9/28/23, 3:04 PM

shine1049.org Reverse Whois Lookup | WhoisDataCenter.com

United States

Email:

artl@uccsda.org

Phone:

+1.5098382761

Fax:

+1.5098384882

TECHNICAL CONTACT

Name:

ARTHUR LENZ

Company:

UPPER COLUMBIA CONFERENCE

Address:

3715 S. GROVE RD

City:

WA

State:

WA

Zip Code:

99224-6090

Country:

United States

Email:

artl@uccsda.org

Phone:

+1.5098382761

Fax:

+1.5098384882

BILLING CONTACT

Name:

Company:

Address:

City:

State:

Zip Code:

Country:

9/28/23, 3:04 PM

shine1049.org Reverse Whois Lookup | WhoisDataCenter.com

Email:

Phone:

Fax:

NAME SERVERS

Name Server 1:

ns1.uccsda.org

Name Server 2:

ns2.uccsda.org

Name Server 3:

Name Server 4:

DOMAIN STATUS

Domain Status 1:

OK

Domain Status 2:

Domain Status 3:

Domain Status 4:

 shine1049.org updated on : 2016-08-06 14:18:08



WHOIS DATA CENTER

WhoisDataCenter.com has been ranked #1 in Domain Data Provider since the year 2017. We provide the "Newly Registered Domains List" for domains to businesses, individuals, non-profit organizations, and others.

Domain Feed

Newly Registered Database

Expiring Domains Database

Expired Domains Database

Free Domains Download

Domains by Create Date

9/28/23, 3:04 PM

shine1049.org Reverse Whois Lookup | WhoisDataCenter.com

[Domains by Update Date](#)

[Domains by Status](#)

Domain Database

[Complete Whois Database](#)

[Whois Database By Years](#)

[Domains by Countries](#)

[Domains by TLDs](#)

[Domains by Registrars](#)

Useful Links

[API Docs](#)

[Changelog](#)

[Terms of services](#)

[Privacy Policy](#)

[List of all TLDs](#)

[Career](#)

[Support](#)

[Support](#)

[Changelog](#)

[Terms of services](#)

[Privacy Policy](#)

[List of all TLDs](#)

[Career](#)

[API Docs](#)

2011 - 2023 © whoisdatacenter.com

WHOIS DATA CENTER

Time Travel Whois Lookup


Domain	Phone	Email	Name	Company	Keyword
--------	-------	-------	------	---------	---------


UPPER COLUMBIA CONFERENCE


Search


'73' Whois Records found for the Company 'UPPER COLUMBIA CONFERENCE'

[↓](#) Download

 friendsofhaydenlake.com updated on : 2016-08-24 23:53:51	▼
--	---

 fit4him.com updated on : 2016-08-24 10:28:15	▼
--	---

 christianhitcountdown.com updated on : 2016-08-09 21:13:04	▼
--	---

 shine1049.org updated on : 2016-08-06 14:18:08	▼
--	---

 shine1049.net updated on : 2016-08-06 14:17:53	
--	--

Formatted	XML	JSON	Plain Text
-----------	-----	------	------------

DOMAIN INFORMATION

Domain Name:

shine1049.net

TLD:

WHOIS DATA CENTER

Domain Registrar Name:

①

Domain Registrar Url:**Create Date:**

2016-08-02

Updated Date:

2016-08-02

Expiry Date:

2018-08-02

Query Time:

2016-08-06 14:17:53

REGISTRANT CONTACT**Name:**

ARTHUR LENZ

Company:

UPPER COLUMBIA CONFERENCE

Address:

3715 S. GROVE RD

City:

SPOKANE

State:

WA

Zip Code:

99224-6090

Country:

United States ①

Email:

artl@uccsda.org

Phone:

15098382761

Fax:

15098384882

ADMINISTRATIVE CONTACT**Name:**

ARTHUR LENZ

9/28/23, 3:47 PM

Reverse whois lookup of UPPER-COLUMBIA-CONFERENCE | WhoisDataCenter.com

WHOIS DATA CENTER

Address:

3715 S. GROVE RD

City:

SPOKANE

State:

WA

Zip Code:

99224-6090

Country:

United States

Email:

artl@uccsda.org

Phone:

15098382761

Fax:

15098384882

TECHNICAL CONTACT

Name:

ARTHUR LENZ

Company:

UPPER COLUMBIA CONFERENCE

Address:

3715 S. GROVE RD

City:

WA

State:

WA

Zip Code:

99224-6090

Country:

United States

Email:

artl@uccsda.org

Phone:

15098382761

Fax:

15098384882

9/28/23, 3:47 PM

Reverse whois lookup of UPPER-COLUMBIA-CONFERENCE | WhoisDataCenter.com

WHOIS DATA CENTER

ARTHUR LENZ

Company:

UPPER COLUMBIA CONFERENCE

Address:

3715 S. GROVE RD

City:

SPOKANE

State:

WA

Zip Code:

99224-6090

Country:

United States

Email:

artl@uccsda.org

Phone:

15098382761

Fax:

15098384882

NAME SERVERS

Name Server 1:

dns1.name-services.com

Name Server 2:

dns2.name-services.com

Name Server 3:

dns3.name-services.com

Name Server 4:

dns4.name-services.com

DOMAIN STATUS

Domain Status 1:






OK

Domain Status 2:

Domain Status 3:

Domain Status 4:

WHOIS DATA CENTER

 shine1049.com updated on : 2016-08-06 14:16:45	▼
<hr/>	
 shine1049.net updated on : 2016-08-02 19:47:24	▼
<hr/>	
 shine1049.com updated on : 2016-08-02 18:37:11	▼
<hr/>	
 amerinetics.com updated on : 2016-07-25 21:42:02	▼
<hr/>	
 accountingnavigator.com updated on : 2016-07-23 17:01:50	▼

Showing 1 to 10 of 13 entries
First « 7 »

WHOIS DATA CENTER

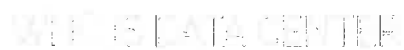
WhoisDataCenter.com has been ranked #1 in Domain Data Provider since the year 2017. We provide the "Newly Registered Domains List" for domains to businesses, individuals, non-profit organizations, and others.

Domain Feed

Newly Registered Database
Expiring Domains Database
Expired Domains Database
Free Domains Download
Domains by Create Date
Domains by Update Date
Domains by Status

Domain Database

Complete Whois Database
Whois Database By Years
Domains by Countries



Useful Links

[API Docs](#)

[Changelog](#)

[Terms of services](#)

[Privacy Policy](#)

[List of all TLDs](#)

[Career](#)

[Support](#)

[Support](#)

[Changelog](#)

[Terms of services](#)

[Privacy Policy](#)

[List of all TLDs](#)

[Career](#)

[API Docs](#)

2011 - 2023 © whoisdatacenter.com

WHOIS DATA CENTER

Time Travel Whois Lookup







Domain	Phone	Email	Name	Company	Keyword
--------	-------	-------	------	---------	---------

UPPER COLUMBIA CONFERENCE

Search

'73' Whois Records found for the Company 'UPPER COLUMBIA CONFERENCE'

[↓](#) Download

	friendsofhaydenlake.com updated on : 2016-08-24 23:53:51	▼
	fit4him.com updated on : 2016-08-24 10:28:15	▼
	christianhitcountdown.com updated on : 2016-08-09 21:13:04	▼
	shine1049.org updated on : 2016-08-06 14:18:08	▼
	shine1049.net updated on : 2016-08-06 14:17:53	▼
	shine1049.com updated on : 2016-08-06 14:16:45	▼

Formatted	XML	JSON	Plain Text
-----------	-----	------	------------

DOMAIN INFORMATION

9/28/23, 3:48 PM

Reverse whois lookup of UPPER-COLUMBIA-CONFERENCE | WhoisDataCenter.com

WHOIS DATA CENTER

TEL:

.COM ⓘ

Domain Registrar Id:

Domain Registrar Name:

ⓘ

Domain Registrar Url:

Create Date:

2016-08-02

Updated Date:

2016-08-02

Expiry Date:

2018-08-02

Query Time:

2016-08-06 14:16:45

REGISTRANT CONTACT

Name:

ARTHUR LENZ

Company:

UPPER COLUMBIA CONFERENCE

Address:

3715 S. GROVE RD

City:

SPOKANE

State:

WA

Zip Code:

99224-6090

Country:

United States ⓘ

Email:

artl@uccsda.org

Phone:

15098382761

Fax:

15098384882

9/28/23, 3:48 PM

Reverse whois lookup of UPPER-COLUMBIA-CONFERENCE | WhoisDataCenter.com

WHOIS DATA CENTER

ARTHUR LENZ

Company:

UPPER COLUMBIA CONFERENCE

Address:

3715 S. GROVE RD

City:

SPOKANE

State:

WA

Zip Code:

99224-6090

Country:

United States

Email:

artl@uccsda.org

Phone:

15098382761

Fax:

15098384882

TECHNICAL CONTACT

Name:

ARTHUR LENZ

Company:

UPPER COLUMBIA CONFERENCE

Address:

3715 S. GROVE RD

City:

WA

State:

WA

Zip Code:

99224-6090

Country:

United States

Email:

artl@uccsda.org

Phone:

9/28/23, 3:48 PM

Reverse whois lookup of UPPER-COLUMBIA-CONFERENCE | WhoisDataCenter.com

WHOIS DATA CENTER

15098384882

BILLING CONTACT

Name:

ARTHUR LENZ

Company:

UPPER COLUMBIA CONFERENCE

Address:

3715 S. GROVE RD

City:

SPOKANE

State:

WA

Zip Code:

99224-6090

Country:

United States

Email:

artl@uccsda.org

Phone:

15098382761

Fax:

15098384882

NAME SERVERS

Name Server 1:

dns1.name-services.com

Name Server 2:

dns2.name-services.com

Name Server 3:

dns3.name-services.com

Name Server 4:

dns4.name-services.com





DOMAIN STATUS

Domain Status 1:

WHOIS DATA CENTER

Domain Status 3:

Domain Status 4:

 shine1049.net updated on : 2016-08-02 19:47:24	✓
 shine1049.com updated on : 2016-08-02 18:37:11	✓
 amerinetics.com updated on : 2016-07-25 21:42:02	✓
 accountingnavigator.com updated on : 2016-07-23 17:01:50	✓

Showing 1 to 10 of 13 entries

First

«

7

»

WHOIS DATA CENTER

WhoisDataCenter.com has been ranked #1 in Domain Data Provider since the year 2017. We provide the "Newly Registered Domains List" for domains to businesses, individuals, non-profit organizations, and others.

Domain Feed

Newly Registered Database

Expiring Domains Database

Expired Domains Database

Free Domains Download

Domains by Create Date

Domains by Update Date

Domains by Status

Domain Database

Complete Whois Database

9/28/23, 3:48 PM

Reverse whois lookup of UPPER-COLUMBIA-CONFERENCE | WhoisDataCenter.com

WHOIS DATA CENTER

[Domains by TLDs](#)

[Domains by Registrars](#)

Useful Links

[API Docs](#)

[Changelog](#)

[Terms of services](#)

[Privacy Policy](#)

[List of all TLDs](#)

[Career](#)

[Support](#)

[Support](#)

[Changelog](#)

[Terms of services](#)

[Privacy Policy](#)

[List of all TLDs](#)

[Career](#)

[API Docs](#)

2011 - 2023 © whoisdatacenter.com